IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 237 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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AMIT VISHNUPRASAD GAJJAR - Applicant(s)
Versus
STATE OF GUJARAT & 8 - Respondent(s)

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Appearance :
MR N.D. NANAVATI, SR. COUNSEL WITH MR. VM TRIVEDI for the Applicant,
MR. K.C. SHAH , APP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 4.
MS AMEE YAJNIK for Respondent(s) : 2,5 - 6.
MR BHUNESH C RUPERA for Respondent(s) : 7,
MR MITESH R AMIN for Respondent(s) : 8 - 9.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 14/5/2007

CAV JUDGMENT

Amit Vishnuprasad Gajjar, applicant, original accused No. 2, has filed this Criminal

Revision Application under Section 397 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) with a prayer that this Court may be pleased to quash and set aside the order dated 30.4.2007 passed by the City Sessions Court in Revision Application No. 176 of 2007. By the impugned judgement the learned Sessions Judge has granted remand for two days i.e. from 1.5.2007 from 8.00 a.m. to 3.5.2007 at 10.30 a.m. so far as the present applicant No. 3 is concerned. The learned Sessions Judge thereby partly allowed the Revision Application filed by the State against the order dated 5.4.2007 passed by the learned Chief Metropolitan Magistrate, Ahmedabad in CID Crime First Crime Register No. 1 of 2006- an application for remand. The learned Chief Metropolitan Magistrate by his order dated 5.4.2007 was pleased to reject the remand application filed by the CID Crime, Ahmedabad.

2. The facts giving rise to this Criminal Revision Application are as under:

3. Bhavanbhai Nathubhai Desai, original complainant (hereinafter referred to as “the

complainant") had filed complaint on 17.10.2006 through his advocate before the learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad. In the said complaint it has been stated as under:

3.1 There was Natraj Cinema situated on the Ashram Road, Ahmedabad and Dairy Den became a tenant of Natraj Cinema and one Shri Harishbhai Fulchandbhai Shah is the owner of the said Dairy Den. The complainant is working as Security Officer of Devanshi Enterprise who is looking after security of the said Dairy Den.

3.2 He has stated that he was present on his duties at 6 O'clock in the morning on 8.10.2006. At that time accused Nos. 1 to 9 i.e. namely, (1) Yogendra Ratilal Patel, (2) Pragnesh Hariprasad Parikh, (3) Amit Gajjar (4) Saurabh Desai, (5) Ashok Mistry, (6) Arvind Mistry (7) Chetan @ Gai (8) Snehal Hariprasad Parikh (9) Kokilaben Bhanusinhji Desai came with about 30 to 40 persons to the parlour of Dairy Den and two persons placed a revolver on his forehead and dragged him to the backside of Natraj

Cinema towards a temple. They told him that if the complainant made a slightest noise, they would kill him. The accused had started demolishing Ice Cream Parlour of the Company. At that time the complainant informed accused No. 3 Amitbhai Gajjar that let him inform to the persons of the Company. Accused Nos. 1 and 2 informed him to keep mum and did not allow him to telephone. The other person namely Pankajbhai came at about 8 O'clock and he was also confined with the complainant.

3.3 Thereafter, Shri Pankajbhai and the complainant were freed at about 11 O'clock and Shri Pankajbhai and the complainant went to the parlour and saw that the furniture of the parlour, Ice Cream Machine, Freeze, Computer, Cash box and other articles with cash amount of Rs. 40,000/- were looted and damage was done. Thereafter, both of them informed their manager Shri Kaushikbhai. He immediately reached the parlour. Then he took them to the factory at Kochrab-Paldi. When they reached there, their security Officer Bharatsinh told that some unknown persons came with a truck and told that

Kaushikbhai had sent them and they threw counter, table, freeze and other articles and ran away with the truck (with all goods).

3.4 Thereafter, the complainant filed complaint in writing on 8.10.2006 to Navrangpura Police Station. The Police Station Officer accepted the same but the police has not initiated any cognizance. No investigation was made and an offence was also not registered. The police did not respond properly and therefore the complainant was required to file complaint before the learned Chief Metropolitan Magistrate 17.10.2006.

3.5 It was further stated therein that all these accused along with 30 to 40 persons rushed at their parlouer. They arranged a pre-planned conspiracy by an unlawful assembly and looted the furniture and cash of parlour and thereby committed an offence. It was further alleged that accused in this case are rich persons and have political influence. They informed the master of the complainant that “you can do nothing to us. Police or Court would not do any

damage to us". In view of the same, the present complaint has been filed with request to assign the complaint to the Crime Branch.

3.6 It was further pressed that the learned Chief Metropolitan Magistrate may pass an order directing to investigate the offence properly. It was further pressed that an order assigning the investigation to an impartial police officer may be passed as muddamal worth Rs. 44 lakhs is required to be recovered. The complainant stated name of some of the witnesses in support of his case.

3.7 The learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad, after going through the complaint by his order daed 17.10.2006, held that, considering the complaint of the complainant, the accused have committed a serious offence and flouted the orders of the Civil Court and therefore it is necessary to initiate investigation of the offence. As it is not possible to make an inquiry by a Court, it is necessary to send this complaint to the police so that lawful action can be taken by making just

investigation. Considering all these facts and circumstances and also considering an impartial and just police investigation is necessary in this matter, the learned Chief Metropolitan Magistrate has passed the following order:

> “The complaint be sent to P.I. (Senior), Navrangpura, for investigation under Section 156(3) of the Cr.P.C. The P.I. (Senior) himself shall make an inquiry and report to this Court within 5 days”.

3.8 Section 156 of the Code provides Police Officer's power to investigate cognizable case. Section 156(3) of the Code provides any Magistrate empowered under Section 190 Code may order such an investigation as above mentioned. Section 190 of the Code provides cognizance of offences by Magistrates.

4. In view of the fact that the accused are rich and influential persons, nothing happened. In view of this, Bhavanbhai Nathubhai Desai, the complainant, was constrained to file Criminal

Revision Application No. 299 of 2007 before this Court on 15.2.2007 with a prayer that this Court may direct opponent No. 1 State of Gujarat to hand over the investigation of case No. M Case No. 1/2006, Navrangpura Police Station, to DIG State of Gujarat or to CID Crime City of Ahmedabad or in the alternative to hand it over to CBI and to make further investigation of the case in accordance with law. In the said application this Court (Coram: K.S. Jhaveri, J) was pleased to pass the following order on 22.3.2007.

> “In the meantime, CID (Crime), State of Gujarat will carry out investigation, in connection with M. Case No. 1/06 registered with the Navrangpura Police Station and will submit a detailed report thereof before this Court within a period of ninety days from the date of receipt of the writ of this Court. It is clarified that this order is passed by consensus and the parties have not invited reasons. Direct service is permitted.”

5. In view of the order passed by this Court, CID Crime filed remand application on 5.4.2007 before the learned Chief Metropolitan Magistrate, Ahmedabad, against all the accused. In the said application it was further stated that as regards the present accused, he had also filed an application for anticipatory bail before this Court and this Court (Coram: K.S. Jhaveri, J) passed order on 8.3.2007 granting anticipatory bail to the accused. However, in para 4 of the said order it was stated that it would be open to the Investigating Officer to file an application for remand, if he considers it proper and just, and the concerned Magistrate would decide it on merits.

6. Pursuant to that order, the CID (Crime) has filed application for remand of the accused. It was stated that in this case large amount of goods have been taken away by the accused which have been stated on pages 4 and 5 of the application and large muddamal is required to be recovered. Even the offence has been taken at whose instance, that also

has to be considered. It was further stated that after committing the offence, all the accused are absconding and therefore they have decided to investigation particularly in view of the order passed by this Court. In the said application it was stated that when the investigation was carried out all the accused have not given any correct information. It was further stated that they have to recover large amount of goods. They have to also inquire as to at whose instance the aforesaid incident dated 8.10.2006 took place. The accused have taken goods in which vehicle and what is the number of vehicle and where they have hidden the muddamal and thereafter they have to recover the goods which have been stolen by the accused. In view of the same, they have to detain the accused and investigate the offence. It was further stated that after the incident all the accused are absconding and where they have stayed, that is to be inquired. Therefore the present accused, namely, Amitkumar Vishnuprasad Gajjar and other accused are required to be interrogated. Hence the CID Crime prayed for 7 (seven) days remand of both the accused.

7. The learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad, by his order dated 5.4.2007 was pleased to reject the said Remand Application but only directed that for 3 (three) days from 7.4.2007 the accused, namely, Pragneshbhai Hariprasad Parikh and Amitkumar Vishnuprasad Gajjar, will remain present before the Investigating Officer at 5.30 p.m. And they will co-operate with the investigation.

8. Being aggrieved and dissatisfied with the aforesaid order dated 5.4.2007 passed by the learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad, the State filed Criminal Revision Application No. 176 of 2007 before the learned Sessions Judge, Ahmedabad, on 17.4.2007. In the said application, it was stated that as the offence against the accused are serious, a detailed investigation is necessary against the accused. It was the duty of the learned Magistrate to inquire as to whether offence under section 395 or Section 397 is occurred or not. The entire order of the learned Chief Metropolitan Magistrate not granting remand of

the accused is a final order and therefore Revision Application under Section 397 of the Code is maintainable at law.

9 The learned Sessions Judge, Ahmedabad, by his judgement and order dated 30.4.2007, has observed that the lower Court has not considered properly provisions of Section 395 and 397 of the I.P.C. Accused No. 2 is a transferee of the present property and accused No. 3 Amit Gajjar is a Corporation Engineer. It was stated that in this case the accused have taken goods worth Rs. 44 lakhs and they have come with 30 to 40 people who have committed the offence and at whose instance the work has been done is required to be investigated. As per the report of the CID (Crime), some of the accused are arrested and some of the accused are absconding. In view of the seriousness of the offence and the record produced and also the statement of some of the witnesses the Revision Application under Section 397 of the Code is maintainable at law particularly in view of the judgement of this Court in the case of GOPALBHAI CHATURBHAI AMIN VS. STATE OF GUJARAT reported in 2005(8) Gujarat High Court Judgement 419. The learned

Sessions Judge further considered that even the High Court while granting bail reserved liberty to the Investigating Officer that they can pray for remand. Even if the accused got anticipatory bail, remand application is maintainable at law. Therefore, in view of the seriousness of the offence, the learned Sessions Judge held that as far as present accused, Amit Gajjar is concerned, remand for two days has been granted from 1.5.2007 at 8.00 a.m. till 3.5.2007 at 10.30 a.m. and thereafter, accused No. 3 may be released by the learned Metropolitan Magistrate.

10. Being aggrieved and dissatisfied with the aforesaid order of the learned Sessions Judge dated 30.4.2007, the present Criminal Revision Application is filed by accused No. 3 Amit Gajjar on 2.5.2007.

11. On behalf of the applicant, I have heard Mr. N.D. Nanavati, learned senior advocate with Mr. V.M. Trivedi, learned advocate. He has submitted that the order of the learned Chief Metropolitan Magistrate dated 5.4.2007 wherein the learned Magistrate has

not granted remand and rejected the application, is an interlocutory order and therefore Criminal Revision Application under Section 397 of the Code it was not maintainable at law. Therefore, the exercise of revisional powers by the learned Sessions Judge in the said Criminal Revision Application is absolutely against the settled law laid down by the Hon'ble Supreme Court as well as this Court. The order of the learned Sessions Judge, Ahmedabad, is contrary to provisions of law and deserves to be quashed and set aside.

12.2 It was further submitted that the learned Sessions Judge has not properly appreciated the principle laid down under Section 167 of the Cr.P.C. which provides for procedure when investigation cannot be completed in twenty four hours.

13. In support of the aforesaid contention, the learned counsel for the applicant accused has relied on the judgement of this Court (Coram: Bankim N. Mehta, J) in the case of KAPIL ASHOKKUMAR JAIN VS. STATE OF GUJARAT in Special Criminal Application No.

1697 of 2005 decided on 7.12.2005. In Kapil Ashokkumar Jain's case the facts were that the learned Judicial Magistrate, First Class, Surat, rejected the application for police remand of the petitioners for investigation by his order dated 23.9.2005. Against the said order, the State filed Revision Application. The learned Sessions Judge by his order dated 13.11.2005 exercising power under Section 397 of the Code quashed and set aside the order of the learned Judicial Magistrate, First Class, rejecting the application for police remand of the petitioners and thereby the learned Sessions Judge granted police remand of the petitioners for 24 hours.

13.1 Being aggrieved and dissatisfied with the said order of the learned Sessions Judge, Special Criminal Application under Section 482 of the Code was filed before this Court. It was the main contention that the Revision Application filed by the State before Sessions Court against the order not granting remand is not maintainable at law. The learned Judge has referred to the judgement of the

Hon'ble Apex Court in the case of State Represented by Inspector of Police and others Vs. N.M.T. Joy Immaculate reported in (2004) 5 SCC 729 particularly para 13 of the said judgement and in para 7 of the judgement in the case of Kapil Ashokkumar Jain this Court has observed as under:

> “In view of above, the order of learned Presiding Officer, Fast Track Court, Surat, partly allowing the Revision Application filed under Section 397 of Code of Criminal Procedure and granting 24 hours police remand of the petitioners is erroneous and is required to be quashed and set aside. However, it is made clear that this order is passed without entering into the merits of the case.”

14. On the other hand Shri K.C. Shah, learned APP, has stated that the present Criminal Revision Application filed by the accused under Section 397 of the Code against the order of the learned Sessions Judge whereby the learned Sessions Judge has directed

that the accused must remain present before the Investigating Officer, is purely simple and interlocutory order as envisaged under Section 397 of the Code is not maintainable at law. The said order of the learned Sessions Judge cannot affect the progress of the trial or its decision in any manner. The order is pure, simple, interlocutory order and in view of bar created by sub-section (2) of Section 397 the Revision against the said order by the present accused is not maintainable. In support of the same, he has relied on the judgement of the Hon'ble Supreme Court in the case of STATE REPRESENTED BY INSPECTOR OF POLICE AND OTHERS VS. N.M.T. JOY IMMACULATE reported in (2004) 5 SCC 729. The learned APP heavily relied on paragraph Nos. 12 and 13 of the said judgement. In paragraph Nos. 12 and 13 of the said judgement the Hon'ble Supreme Court has observed as under:

14.1 “para 12 – Same question has recently been considered in K.K. Patel V. State of Gujarat. In this case a criminal complaint was filed against the Superintendent of

Police and Deputy Superintendent of Police alleging commission of several offences under the Indian Penal Code and also under Section 147-G of the Bombay Police Act. The Metropolitan Magistrate took cognisance of the offence and issued process to the accused, who on appearance filed a petition for discharge on the ground that no sanction as contemplated by Section 197 CrPC had been obtained. The Metropolitan Magistrate dismissed the petition against which a revision was filed before the Sessions Judge, who allowed the same on the objection raised by the accused based upon Section 197 Cr.PC and also Section 161(1) of the Bombay Police Act, which creates a bar of limitation of one year. The revision preferred by the complainant against the order of discharge was allowed by the High Court on the ground that the order passed by the Metropolitan Magistrate rejecting the prayer of the accused to discharge them was an interlocutory order. In the appeal

preferred by the accused, this Court after referring to AMAR NATH V. STATE OF HARYANA (1977) 4 SCC 137, MADHU LIMAYE V. STATE OF MAHARASHTRA (supra) and V.C. SHUKLA V. STATE 1980 Supp SCC 92 held that in deciding whether an order challenged is interlocutory or not, as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim sage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings. If so, any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. It was further held that as in the facts of the case, if the objections raised by the accused were upheld, the entire prosecution proceedings would have been terminated, the order was not an interlocutory order and consequently it was revisable.

14.2 Para 13 – Section 167 CrPC empowers a

Judicial Magistrate to authorize the detention of an accused in the custody of police. Section 209 CrPC confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Session and also until the conclusion of the trial. Section 309 CrPC confers power upon a court to remand an accused to custody after taking cognisance of an offence or during commencement of trial when it finds necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in MADHU LIMAYE CASE it cannot be categorised even as an “intermediate order”. The order is,

therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 CrPC, a revision against the said order is not maintainable. The High Court, wherefore, erred in entertaining the revision against the order dated 6.11.2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."

14.3 Thereafter in paragraph No. 19 of the said judgement the Hon'ble Supreme Court has stated that the appeal filed by the State is allowed and the impugned judgement and order of the High Court dated 11.4.2002 is set aside.

14.4 The learned APP, has further relied on the judgement of this Court in the case of GOPALBHAI CHATURBHAI AMIN VS. THE STATE OF GUJARAT reported in (2005) 8 G.H.J. 419. In the said judgement after referring to para 13 of the judgement of the Hon'ble Supreme Court in the case of STATE VS. N.M.T. JOY IMMACULATE (supra) my learned brother Mr. Justice

D.N. Patel has in Gopalbhai C. Amin's case (supra) observed as under:

14.5 “From the aforesaid paragraph it is clear that there is vast difference between the grant of remand and rejection of the remand. The whole decision of the Hon'ble Supreme Court reported in (2004) 5 SCC 729, was for grant of remand, which is held as an interlocutory order and not revisable. If the remand is rejected and the remand of the accused is not given to the police, it adversely affects the right of the prosecution of carrying out investigation. Right to carry out investigation and by which method, is exclusive powers of the State. Custodial interrogation, is one of the well known methods of investigation and therefore when the remand is not granted, it affects vitally and adversely, the investigation but if the same is granted, then as per para 13 of the aforesaid Judgement, even if the remand is granted,

illegally, it does not affect finality of the case and therefore grant of remand is interlocutory order, but converse is not true and therefore, revision application preferred by the prosecution against the order passed by the Judicial Magistrate, First Class, before the Sessions Court at Ahmedabad (Rural), was tenable at law under Section 377 of the Code of Criminal Procedure."

14.6 The learned A.P.P. therefore submitted that the present Criminal Revision Application under Section 397 of the Code is not maintainable at law in view of the judgement of the Hon'ble Supreme Court in the case of N.M.T. Joy Immaculate (supra) and the judgement of this Court in the case of GOPALBHAI CHATURBHAI AMIN VS. THE STATE OF GUJARAT (supra). This Court may, therefore, be pleased to reject the said Criminal Revision Application.

15. The learned counsel for the applicant Mr. N.D. Nanavati, learned senior counsel has stated that

it is no doubt true that as regards remand order it is an interlocutory order and therefore under Section 397 of the Code the Revision Application is not maintainable at law as held by the Hon'ble Supreme Court in the case of N.M.T. Joy Immaculate (supra). It is also true that this Court (Coram: D.N. Patel, J) has also relied on the said judgment and held that Revision Application is not maintainable. However, he has relied on the judgment of this Court (Coram: Bankim N. Mehta, J) decided on 7.12.2005. It may be noted that my learned brother Mr. Justice D.N. Patel decided the matter on 6.12.2004. It is no doubt true that in that case the learned Magistrate did not grant remand. Against that the learned Sessions Judge granted remand and in that matter this Court under Section 482 of the Code held that Revision Application under Section 397 of the Code before the learned Sessions Judge is not maintainable and the order passed by the learned Sessions Judge was quashed and set aside only on the ground that under sub-Section (2) of Section 397 of Code the Sessions Court had no power to entertain the Revision Application. It was held that the order not granting

remand passed by the learned Magistrate was an interlocutory order. Thus, the learned counsel contended that there is an apparent conflict between the two judgements of this Court in the case of GOPALBHAI CHATURBHAI AMIN VS. STATE OF GUJARAT (supra) on one hand wherein against the order of remand granted by the learned Sessions Judge, this Court held that Revision Application is not maintainable; whereas in the case of KAPIL ASHOKKUMAR JAIN (supra) this Court has held that the order granting remand by the learned Judge was not revisable under Section 397 of the Code. Therefore, this Court must refer the matter to a larger Bench i.e. Division Bench.

CONCLUSION AND FINDINGS:

BACKGROUND OF THE MATTER:

16.1 It is well known that on Ashram Road, Ahmedabad, Natraj Cinema was constructed somewhere in 1967-68. In the year 1969 Dairy Den became tenant of Natraj Cinema. In view of difference and dispute

between the landlord, Natraj Cinema and Dairy Den, Dairy Den filed Civil Suit No. 2120 of 1990 seeking declaration as tenant and other relief. Thereafter, in the year 1994 Suit No. 336 of 1994 was filed by Natraj against Dairy Den before the Small Causes Court.

16.2 It appears that Natraj Cinema decided to close down the gate of Dairy Den and therefore Dairy Den filed Civil Suit No. 29 of 2000 on 10.1.2000.

16.3 From the record it appears that Small Causes Court has passed common order on 18.2.2003 in Civil Suit No. 2120 of 1990 and Civil Suit No. 336 of 1994 holding Dairy Den as tenant of Natraj Cinema and specifying the area as a tenant and 1200 sq. ft. open space for permissive user. The said judgement became final as nobody has filed any further proceeding by way of appeal.

16.4 It appears that Natraj Cinema filed Civil Suit No. 206 of 2004 for evicting Dairy Den as a tenant and the same is still pending.

16.5 Shri C.G. Sharma, advocate, gave advertisement on 27.1.2006 for title clearance for Natraj properties. Dairy Den filed objections and registered their objections by its letter dated 2.2.2006.

16.6 It appears that part of Natraj Cinema was demolished and therefore Dairy Den filed Civil Suit No. 988 of 2006 on 10.5.2006 for injunction. On 11.5.2006 Pure Infrastructure and Parikh Real Estate and Leasing Pvt. Ltd. Purchased Natraj properties.

16.7 It appears that the new Owner decided to disconnect water supply and other connections and therefore Dairy Den filed Civil Suit No. 1639 of 2006.

16.8 On 3.10.2006, the mother of owner of Dairy Den Harish F. Shah seriously fell ill and therefore he rushed to London for treatment of his mother on 4.10.2006. He reached London on 5.10.2006.

16.9 All these facts show that Dairy den was a legal tenant of the premises in question. All civil proceedings are pending in the respective Small Causes Court. In view of these proceedings, it appears that the learned Small Causes Court, Ahmedabad, has held that Dairy Den happened to be tenant of the premises in question. The interim injunction which has been gratned in favour of Diary Den is in force and the Suit is pending for trial. However, when Shri Shah was at London on 8.10.2006, mob of about 50 to 60 persons consisting of the accused persons came on the Dairy Den parlour and took watchman Bhavan Desai – the complainant at the gun point and took all the machineries and things away and demolished the proporty. Shri Bhavan Desai and other staff called mobile police which came and went away. The complaint given to the police at Navrangpura was never acted upon. The accused have taken law into their hands and used their muscle power against the complainant.

16.10 The wife of Harish Shah informed about

the incident immediately at London. Therefore, Shri Harish Shah started back for India on 8.10.2006 and arrived at Ahmedabad on 9.10.2006 and got appointment of Assistant commissioner of Police for 10.10.2006. He met the Assistant Commissioner of Police on 10.10.2006 who assured that within a week steps will be taken.

16.11 Natraj properties were demolished in toto including that of tenanted property of Dairy Den. It included use of dynamite and FSL report awaited.

PRESENT CONTROVERSY:

16.12 After waiting for some time, as per the assurance of the Police Commissioner, Bhavan Desai gave complaint before Metropolitan Magistrate on 17.10.2006. It is alleged that that 9 accused came at the Dairy Den parlour at 6.00 a.m. at Natraj Cinema, Dairy Den parlour with 30 to 40 persons and they dragged the complainant at gun point at the back side of Natraj Cinema and goods worth R. 44,00,000/- were looted. Though complaint was filed but nothing

was done on the same.

16.13 The learned Metropolitan Magistrate by his order dated 17.10.2006 sent it for inquiry under Section 156(3) of the Code which provides any Magistrate empowered under Section 190 may order such an investigation. Section 190 of the Code provides cognizance of offences by Magistrates.

16.14 It may be noted that on 18.10.2006 Miscellaneous Civil Application is filed against Natraj owners and new purchasers for committing contempt of decree passed in Civil Suit No. 2120 of 1990 and the same is pending. Another Suit No. 2067 of 2006 is filed against the Natraj owners on 19.10.2006. On 17.12.206 mother of Harish Shah expired.

16.15 The Hon'ble Small Causes Court passed order on 29.12.2006 directing Natraj to maintain status quo.

16.16 As indicated above, in view of the order

passed by this Court dated 22.3.2007 the entire investigation was handed over to CID Crime and thereafter the CID Crime filed application for remand on 5.4.2007. The learned Chief Metropolitan Magistrate by his order dated 5.4.2007 was pleased to reject the remand application of the CID (Crime).

16.17 Being aggrieved and dissatisfied with the said order of the learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad, dated 5.4.2007, the State filed Revision Application under Section 397 of the Code where the learned Sessions Judge by his order dated 30.4.2007 was pleased to partly allow the Revision Application and granted remand as far as the present applicant is concerned.

16.18 In view of the aforesaid facts, the question before this Court is as to whether the Criminal Revision Application under Section 397 of the Code filed by the present accused against the order of the learned Sessions Judge is maintainable at law or not.

16.19 For appreciating this contention, I have to

first consider Section 167 of the Code which provides when investigation cannot be completed with 24 hours.

> "(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty four hours fixed by Section 57, and there are ground for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
>
> (2) The Magistrate to whom an accused person is forwarded under this Section may, whether he has or has not jurisdiction to

try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction".

16.20 I may also refer to Section 209 of the Code which provides commitment of case to Court of Session when offence is triable exclusively by it which also provides power of the Court to pass order regarding remand in certain situation. I also consider Section 309 of the Code which provides power to postpone or adjourn proceedings where also the power of Magistrate for granting remand is also provided.

16.21 The Code of Criminal Procedure was amended in 1973. The said Code was amended with three following criteria laid down in this behalf:

"(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community."

[See: V.C. Shukla Vs. State reported in AIR 1980 SC 962 - 965]

16.22 I also refer to Section 397 of the Code which reads as under:

"Calling for records to exercise of powers of revision – Sec. 397(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any

inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation – All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemeded to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The power of revision conferred by sub-

section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

17. Section 397 falls Chapter XXX of the Code which provides Reference and Revision. Section 397 provides calling for records to exercise of powers of revision. However, howsoever wide power Section 397 is there, sub-Section (2) of Section provides that power of Revision conferred by sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings. Thus it would appear that Section 397(2) of the Code incorporated in the 1973 Code with the avowed purpose of cutting out delays and ensuring that the accused persons got a fair trial without

much delay and the procedure was not made complicated.

17.1 The powers of Revision against interlocutory are being taken away as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases.

17.2 So far as Section 397(3) of the Code is concerned, in this case the learned Magistrate did not grant remand. Against that State filed Revision Application under Section 397 of the Code the learned Sessions Judge passed order for remand. Against that order, the accused have filed revision application under Section 397 before this Court. So the same person has not filed Revision Application under Section 397. So the bar contained in Section 397(3) will not apply to the present case.

17.3 After considering the statutory provisions the only question which I have to consider is as to whether the Criminal Revision Application filed by the present accused challenging the order of the

learned Sessions Judge is legal and valid and whether the Revision Application is maintainable at law or not.

18. In aforesaid the judgement of the Hon'ble Supreme Court in the case of STATE REPRESENTED BY INSPECTOR OF POLICE AND OTHERS VS. N.M.T. JOY IMMACULATE (supra) the Hon'ble Supreme Court after narrating certain facts in para 4 of the said judgement stated that in that case the Investigating Officer moved an application before the learned Magistrate for grant of police remand of Joy Immaculate. The learned Magistrate, Egmore, Chennai, passed a detailed order on 6.11.2001 whereunder she was given in police custody for one day and was to be produced in Court for certain time.

18.1 Being aggrieved and dissatisfied with the said order, the accused filed Criminal Revision Application under Section 397 of the Code before the High Court being CrI RC No. 1569 of 2001. The High Court was pleased to allow the application and was pleased to quash and set aside by holding that the order granting police custody in respect of the

petitioner passed by the learned Magistrate is non-est and has to be erased from the records. The High Court had granted certain directions for which this Court is not concerned.

18.2 Against the aforesaid order of the High Court, the matter went to the Hon'ble Supreme Court. The Hon'ble Apex Court considered the order of the learned Magistrate and thereafter order of the High Court and the question raised before the Hon'ble Apex Court was whether the Revision Application filed before the High Court under Section 397 of the Code was maintainable. The said question was raised in para 8 of the judgement. The question was also raised that in view of sub-Section (2) of Section 397 of the Code once the order of remand is interlocutory order whether Revision Application before the High Court was maintainable at law. The Hon'ble Apex Court considered meaning of interlocutory and final order and in para 9 referred to Halsbury's Laws of England, 4th Edition, Vol. 26, page 504 in connection with what is judgement, what is final and what is interlocutory order. In para 10 of the said judgement the Hon'ble

Apex Court has considered the judgement in the case of S. KUPPUSWAMI RAO V. R. reported in AIR 1949 PC 1 and in para 11 the Hon'ble Supreme Court has referred to the judgement in the case of MADHU LIMAYE VS. STATE OF MAHARASHTRA reported in (1977) 4 SCC 551. In para 12 which has been quoted earlier , the Hon'ble Apex Court has referred to the judgement in the case of K.K. PATEL VS. STATE OF GUJARAT reported in (2000) 6 SCC 195 and in para 13 the Hon'ble Supreme Court has considered provisions of Sections 167, 209 and 309 of the Code and thereafter observed that the order of remand is pure and simple interlocutory and in view of the bar created by Section 397(2) of Code revision against the said order is not maintainable at law and therefore the order of the High Court entertaining the revision application against the order of the learned Magistrate granting remand was quashed and set aside.

19. Similar view has been taken by my learned brother Mr. Justice D.N. Patel which squarely supports the case of the prosecution on the question that Revision Application filed by the accused is not

maintainable at law.

20. It is also no doubt true that the learned APP who appeared before the High Court has almost conceded and the learned Judge has observed in para 4 of his judgement in the case of Kapil Ashokkumar Jain (supra) as under:

> “Learned Additional Public Prosecutor Mr. Patel has fairly conceded that in view of the judgement of Hon'ble Supreme Court, the order of police remand being interlocutory order, the revision application is not maintainable. He has also submitted that the State has a right to challenge the order passed by the learned Magistrate in appropriate proceedings.”

21. I have referred to the order of this Court in Kapil Ashokkumar Jain's case (supra) decided on 7.12.2005. After going through the judgement, it appears that this Court while exercised the power

under Section 482 of the Code. In that case the learned Magistrate was pleased to reject the remand application. Against that the learned Presiding Officer, Fast Track Court, Surat, under Section 397 of the Code allowed the Revision Application and granted 24 hours police remand of the accused. In this context, under Section 482 of the Code, the question raised is as to whether the learned Presiding Officer, Fast Track Court, Surat, properly exercised the power under Section 397 of the Code. While dealing with the said question, this Court Court held that the Revisional Power under Section 397 of the Code exercised by the Presiding Officer, Fast Track Court, Surat, is erroneous and requires to be quashed and set aside. So in that case the Court was exercising the power under Section 482 of the Code and secondly in para 4 of the said judgement the learned Additional Public Prosecutor has fairly conceded as stated above that in view of the judgement of the Hon'ble Apex Court, the order of police remand being interlocutory order, the revision application was not maintainable. In this view of the matter, the aforesaid order has been passed in

peculiar facts and circumstances of the case and therefore the said order of the learned Judge in Kapil Ashokkumar Jain's case (supra) is distinguishable both on facts as well as in law.

22.1 I have considered the judgement of the Hon'ble Supreme Court in the case of N.M.T. Joy Immaculate. In that case the learned Magistrate granted remand which was set aside under Section 397 by the High Court. The Hon'ble Sureme Court while setting aside the said order has held that the remand order being purely interlocutory order, no revision lies against the same. In view of this, the question raised before this Court that the Sessions Court has passed interlocutory order in this case only for remand which is also purely interlocutory order, so the present revision application under Section 397 of the Code is not maintainable at law.

22.2 The view which I have taken is supported by the judgement of this Court in the case of Gopal C. Amin (supra).

22.3 Over and above, I have gone through the application filed by the CID (Crime) for remand before the learned Sessions Judge where the grounds for remand have been mentioned. The learned Sessions Judge has, after considering carefully the application, given very cogent and convincing reasons and held that the accused has been remanded for two days from 8.00 a.m. On 1.5.2007 to at 10.30 a.m. On 3.5.2007. This order being purely simple and interlocutory order, the present Criminal Revision Application under Section 397 of the Code is not maintainable at law. Therefore, the order of the learned Sessions Judge is upheld.

23. I have gone through the application filed by police for remand before the learned Sessions Judge where substantial grounds have been raised. The learned Sessions Judge has, after considering carefully, given cogent and convincing reasons and held that the accused has been remanded for two days from 8.30 a.m. on 1.5.2007 to 10.30 a.m. On 3.5.2007. This order is purely simple and interlocutory order. This order do not affect the progress of the matter.

Therefore, the present Revision Application filed by the accused against the said order of the learned Sessions Judge is not maintainable at law.

FINAL ORDER:

24. In this case the accused have challenged the order of the learned Sessions Judge granting remand under Section 397 of the Code. This order being pure, simple, interrogatory order and therefore in view of Section 397(2) of the Code and after relying on the judgement of the Hon'ble Supreme Court in the case of N.M.T. Joy Immaculate (supra) and also the judgement of this Court in the case of Gopalbhai C. Amin (supra), I am of the view that the present Criminal Revision Application filed by the accused is not maintainable at law. The same is rejected accordingly. Interim relief which has been granted from time to time and the same is continued till today, shall stand vacated.

(K.M. MEHTA, J)

(pkn)

After pronouncement of this judgement, Mr. Vikram Trivedi, learned advocate for the applicant, prays for stay of the aforesaid judgment and order in

order to enable him to approach the Hon'ble Apex Court as well as this Court. Mr. K.C. Shah, learned A.P.P. has strongly objected to the same on the ground that once this Court has held that this Court has no jurisdiction under Section 397 of the Code, this Court cannot further extend the interim relief which was granted earlier. Looking to the peculiar facts and circumstances of the case, gravity of the offence and keeping in mind the ratio of the judgement of the Hon'ble Apex Court in the case of N.M.T. Joy Immaculate (supra) and also the judgement of this Court in the case of Gopalbhai C. Amin (supra) wherein this Court has held that in view of Section 397(2) of the Code, the revision application is not maintainable against interlocutory order of the learned Sessions Judge. Hence the request made by the learned advocate for the applicant is not accepted.

Dt. 14.5.2007 (K.M. MEHTA, J)

(pkn)